

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
:
GENERAL MOTORS CORP., *et al.*, : Case No. 09-50026 (REG)
:
Debtors. : (Jointly Administered)
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**LIMITED OBJECTION OF DTE DEFIANCE, LLC TO NOTICE OF (I)
DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY AND
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
AND (II) CURE AMOUNTS RELATED THERETO**

DTE Defiance, LLC ("Defiance"), by and through its counsel, Paul, Hastings, Janofsky & Walker LLP, pursuant to the requirements of the Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, (I) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice, dated June 2, 2009 [Docket No. 274] (the "Sale Procedures Order") hereby submits this limited objection (the "Limited Objection") to the proposed Cure Amount,¹ and to the proposed assumption and assignment of any of the Assumable

¹ Capitalized terms used in this Limited Objection and not specifically identified herein have the meaning given those terms in the Sale Procedures Order.

Executory Contracts to which Defiance may be a party. In support of this Limited Objection, Defiance represents as follows:

Statement

1. Defiance and General Motors Corporation (“GM”) are parties to a suite of documents pursuant to which Defiance provides industrial support services to GM’s facility located in Defiance, Ohio (“GM’s Defiance Plant”). The suite of documents form a single, complicated, structured transaction involving, but not limited to, (a) Defiance (as assignee of Defiance Energy, LLC) and GM entering into a Utility Services Agreement, and a related amendment, governing the design, construction and provision of certain industrial support services from a services facility at GM’s Defiance Plant (the “Facility”); (b) Defiance (as assignee of Defiance Energy, LLC) and GM entering into a Project Site License Agreement (the “License Agreement”); and (c) Defiance (as assignee of Defiance Energy, LLC) entering into a finance lease arrangement with Defiance Statutory Trust (as assignee of PNC Leasing, LLC) (“Statutory Trust”) pursuant to which Statutory Trust, as lessor, leases certain machinery, equipment and other personal property to Defiance, as lessee, and consisting of certain related documents, including, but not limited to, a Three Party Agreement by and among Defiance, Statutory Trust and GM (collectively, the “Defiance Financing Arrangements”).²

² This Limited Objection refers to the matters described in Paragraph 1 and related matters collectively as the “Defiance Transaction.”

2. On July 9, 2009, Defiance received a “Notice of (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto” (the “Cure Notice”). Although the Cure Notice was dated June 15, 2009, because the Cure Notice was not received by Defiance until July 9, 2009, Defiance does not believe that this Limited Objection is out of time under the procedures set forth in the Sale Procedures Order.

3. The Cure Notice advised Defiance “[y]ou are receiving this Notice because you are a party to one or more of the Assumable Executory Contracts” and directed Defiance to “a secure website which contains information about [Defiance’s] Assumable Executory Contract, including amounts that the Debtors believe must be paid to cure all prepetition defaults . . .” The Contract Website for Defiance sets forth seven contracts – identified only by “Row ID” numbers and contract type – and the Contract Website provides a cure amount of \$5,876.90.

4. Defiance objects to the assumption and assignment of the Assumable Executory Contracts on the grounds that the Debtors have failed to provide adequate notice of the specific agreements that they intend to assume and assign, and therefore have not and cannot establish their ability to satisfy the conditions to assumption set forth in section 365(b) and 365(f)(2)(B) of the Bankruptcy Code. 11 U.S.C. §365(b) and 365(f)(2)(B). It is unclear based on the Contract Website which specific agreements Debtors intend to assume and assign, as Debtors are required to assume all of the

agreements related to the Defiance Transaction, including, without limitation, the applicable Defiance Financing Arrangements.

5. With respect to the Cure Amount set forth in the Cure Notice, Defiance notes that the specified amount does not correspond with Defiance's records regarding the amount of prepetition defaults currently remaining unpaid.

WHEREFORE, Defiance respectfully requests that the Court direct the Debtors promptly to commence the resolution of the disputed designation and disputed Cure Amount.

Dated: July 17, 2009
New York, New York

Respectfully submitted,

/s/ Mary P. Miras

Thomas L. Kent (TK-2935)
Daniel B. Goldman (DG-4503)
Mary P. Miras (MM-6279)
PAUL, HASTINGS, JANOFSKY & WALKER LLP
Park Avenue Tower
75 East 55th Street
New York, New York 10022
Telephone: (212) 318-6000
Facsimile: (212) 318-4090
Email: thomaskent@paulhastings.com
dangoldman@paulhastings.com
marymiras@paulhastings.com

-and-

Richard A. Chesley (IL 6240877)
Stephenie S. Park (IL 6297376)
PAUL, HASTINGS, JANOFSKY & WALKER LLP
191 North Wacker Drive, 30th Floor
Chicago, Illinois 60606
Telephone: (312) 499-6000
Facsimile: (312) 499-6100
Email: richardchesley@paulhastings.com
stepheniepark@paulhastings.com

ATTORNEYS FOR DTE DEFIANCE, LLC